

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Reexamination of Roaming Obligations of)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers)	

To: The Commissioners

**COMMENTS OF MTA WIRELESS, INC.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

MTA Wireless, Inc. ("MTA Wireless"), by its undersigned counsel, hereby submits comments in response to the Commission's Further Notice of Proposed Rulemaking in the above proceeding.¹ In its ruling in the Report and Order in this proceeding ("*Roaming Order*"), the Commission established an obligation for Commercial Mobile Radio Service ("CMRS") operators to provide limited automatic roaming rights to requesting carriers outside of their home markets on reasonable and non-discriminatory rates. While applauding the Commission for taking this step in furtherance of its recognition of automatic roaming as a common carrier obligation for CMRS operators, MTA Wireless submits that this directive will be deprived of meaningful effect unless it is extended to include an obligation for licensed CMRS operators to grant automatic roaming rights for non-interconnected, broadband access to the Internet. MTA Wireless does not believe that the Commission needs to involve itself in setting rates for such automatic roaming services, but strongly urges the Commission to provide smaller competitors the right to negotiate for broadband Internet access roaming rights on reasonable and nondiscriminatory terms.

¹ Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143, released August 16, 2007 (hereinafter, "FNPRM"), ¶¶ 4, 77.

BACKGROUND

MTA Wireless is a wholly owned subsidiary of Matanuska Telephone Association, Inc. ("MTA"), a rural cooperative local exchange provider. MTA Wireless provides analog and digital wireless service in south-central Alaska using a regional portion of the 800 MHz Channel Block B, assigned to the Cellular Radiotelephone Service, Rural Service Area ("RSA") #2 in Alaska (call sign KNKQ340). Its service area encompasses the Matanuska Valley situated immediately to the north and west of Anchorage, and falls within the Anchorage BTA for PCS services (BTA 014).

MTA Wireless competes with three larger wireless carriers in its mobile market. These are ACS Wireless, which holds state-wide 800 MHz and PCS licenses; Alaska Digitel ("Digitel"), which holds a state-wide PCS license and recently sold a controlling interest to GCI Communications, the holder of the other state-wide PCS license in Alaska and the largest integrated telecommunications provider in the state; and Dobson Communications, which also holds state-wide PCS licenses and was recently acquired by AT&T. ACS Wireless and Digitel operate on CDMA platforms compatible with that of MTA Wireless, while Dobson operates on a GSM platform.

MTA Wireless' licensed service area does not encompass the entire certificated service area of its parent wireline company, MTA. Notably, the community of Eagle River-Chugiak, which accounts for 25 percent of the local exchange carrier's customers, falls outside of MTA Wireless' licensed area, and can only be served by MTA Wireless by means of a voice grade roaming agreement with its leading competitor, ACS Wireless.² Eagle River-Chugiak is situated immediately adjacent to Anchorage and

² MTA Wireless negotiated voice roaming arrangements not only throughout Alaska but in the lower 48 states, as well. As part of its roaming partnership with ACS Wireless, MTA Wireless

represents one of the fastest growing communities today in the State of Alaska. A large and growing number of potential customers of MTA Wireless – estimated at up to 47 percent of the operator’s population – commute to work in Anchorage through Eagle River-Chugiak.

Notwithstanding this disadvantage in spectrum coverage, MTA Wireless enjoys a firm 30-percent share in its market. This is due to its strong identity with its customer base, excellent service record and clarity of signal. Maintenance of this market share is critically dependent, nevertheless, on MTA Wireless’ historical voice roaming arrangement with ACS Wireless. The MTA Wireless experience, therefore, is strong evidence that the availability of automatic roaming arrangements bolsters competition.

The emergence of data service capabilities by means of hand-held, mobile devices and the concomitant subscriber demand for such services, however, presents a fresh and formidable challenge to MTA Wireless and its role as a competitor in a high-growth market. In contrast to its historical arrangement as MTA Wireless’ roaming partner for voice services, ACS Wireless has bluntly informed MTA Wireless that it does not consider extending data roaming services to MTA Wireless to be in its competitive interest. In addition to declining to provide such service, ACS Wireless is proceeding to overbuild MTA Wireless’ service area with towers and cell sites of its own. As part of this facilities roll-out, ACS Wireless is offering advanced data services, as well as voice services, to subscribers in MTA Wireless’ licensed area. Thus, in addition to being deprived of the ability to support its customers’ demand for data services when roaming

has, in turn, provided automatic roaming rights to ACS Wireless’ customers for voice services within its licensed area.

outside of MTA Wireless' limited licensed calling area, MTA Wireless is increasingly being marginalized as a provider of roaming services within its own licensed area.

MTA Wireless has pro-actively sought strategic alternatives to its roaming relationship with ACS Wireless. It competed in and was successful in securing both state-wide and regional licenses in the Advanced Wireless Service auction in 2006. However, it will be another two years before radios, handsets and other equipment are commercially available on a scalable basis for MTA Wireless to make use of this new spectrum acquisition to deliver service to customers. As a result, the lack of a meaningful roaming arrangement for data services represents a significant threat to the medium-term viability of MTA Wireless as a competitive mobile provider.

DISCUSSION

In the *Roaming Order*, the Commission clarified that automatic roaming is a common carrier obligation, requiring CMRS operators to provide roaming services to other carriers upon reasonable request and on a just, reasonable and non-discriminatory basis.³ The Commission held that its establishment of this new obligation for CMRS operators is a natural outgrowth of its previous determination that roaming is a common carrier service, as it provides end users access to foreign networks in order to communicate messages of their own choosing.⁴ Thus, the obligation to make automatic roaming available among carriers is, ultimately, not to benefit competing carriers, but rather to benefit end users of wireless mobile services. MTA Wireless strongly endorses this holding of the Commission, and notes, as outlined above, that its access to voice

³ *Roaming Order*, ¶¶ 1, 23.

⁴ *Id.*, ¶¶ 1, 3.

roaming services has helped enable it to provide its subscribers with a competitive service offering.

The Commission's recognition of a common carrier automatic roaming obligation in the *Roaming Order*, however, is a limited one and, in MTA Wireless' view, fatally flawed. The Commission restricted its finding of a common carrier obligation to provide roaming only to "services that are real-time, two-way switched voice or data service that are interconnected with the public switched network...."⁵ According to the Commission, the justification for this restriction is that it will ensure that "all CMRS providers competing in the mass market for real-time, two-way voice and data services are similarly obligated to provide automatic roaming services..."⁶

While this objective is worthy, in the contemporary mobile telephony market it is an artificially restricted one, in that it effectively excludes from the automatic roaming requirement access to "non-interconnected services or features,"⁷ including broadband Internet access. From MTA Wireless' perspective, this restriction is fatal to the effectiveness of the policy objective the Commission seeks to achieve for the benefit of consumers, in that it will effectively prevent smaller carriers, like MTA Wireless, from competing for the true growth areas of the market.

MTA Wireless' market analysis projects that data ARPU, as a percentage of total wireless ARPU, will grow from 4 percent in 2008 to an impressive 60 percent by 2016. However, the mobile wireless data market is multi-faceted, and only a portion of it entails "real-time, two-way switched" services. These services are essentially text and instant messaging services. It is established, however, that these narrowband services, while in

⁵ *Id.*, ¶¶ 2, 23, 29, 54.

⁶ *Id.*, ¶ 29.

⁷ *Id.*, ¶ 54.

themselves important in terms of minutes of use, are today not the primary revenue drivers in the domestic data wireless market. Moreover, because of the switched nature of these services, MTA Wireless had already been able to configure its voice roaming service capabilities to enable the provision of text and instant messaging. Therefore, the Commission's limited holding regarding the automatic roaming obligation for switched data services adds little to a determination that such an obligation exists for voice services alone.

On the other hand, industry statistics reveal that, because in part of their transactional-based pricing, Internet access and multi-media content offerings already account for up to 67 percent of revenue derived from the wireless data services market. As a result, it is disingenuous for the Commission to have concluded in the *Roaming Order* that the record in this proceeding "lacks a clear showing that it is in the public interest" for common carriers' automatic roaming obligation to extend to non-interconnected features or services.⁸ Data networks are today inherently IP-based, and the most dynamic usage of the wireless platform requires access to the Internet. By denying access through roaming to the Internet and its content, the Commission is effectively maintaining a "walled garden" among interconnected networks, and in the process vitiating the automatic roaming obligation that it has purported to establish in the *Roaming Order*.

Nor is it logical for the Commission to give credence to the arguments of critics that requiring roaming for non-interconnected features "might undercut incentives to differentiate products and could chill innovation."⁹ MTA Wireless would expect that a

⁸ *Id.*, ¶ 56.

⁹ *Id.*

common carrier obligation for host carriers to open their networks to roaming customers for Internet access purposes would provide such subscribers entry only to open-access Internet features. Host carriers would be able to continue to develop, maintain and market unique suites of enhanced service offerings which would be limited to their customers. They would retain the prerogative to choose, as a business decision, whether to permit roaming customers to access such unique features, presumably on a graduated fee basis. Either way, the motivation of the host carrier to innovate and improve its tailored content service offerings would remain unabridged under this regulatory approach. Thus, by allowing access to non-switched, broadband services on their networks as a platform, host carriers would in no manner lose the ability to promote their own proprietary multimedia service offerings.

In response to the Commission's Further Notice of Proposed Rulemaking on this issue,¹⁰ MTA Wireless urges the Commission to extend the common carrier obligation at least to encompass wireless broadband Internet access service. The absence of mandatory access to broadband data services will materially and adversely impact MTA Wireless' ability to continue to sustain competition on an even footing in those portions of its natural market – like Eagle River-Chugiak – where it lacks a wireless spectrum license of its own. ACS Wireless and other competitors have already begun to advertise the availability of Web access and multi-media content on their mobile telephony service offerings in MTA Wireless' service area and in adjoining areas through which a significant portion of its subscriber base commutes to and from Anchorage. In the absence of a mandatory roaming obligation for broadband services, MTA Wireless'

¹⁰ *Id.*, ¶¶ 4, 77.

larger competitors are free to deny access to such service arbitrarily, or to require onerous terms to secure such access for MTA Wireless' customers.

Given ACS Wireless' refusal to deal with it for such services, MTA Wireless was forced to find another roaming partner capable of and willing to provide roaming access to broadband data services pending MTA Wireless' ability to deploy its own facilities-based system utilizing its newly acquired AWS spectrum. The cost to MTA Wireless for reaching terms with its only other CDMA-based competitor was high. Digitel required MTA Wireless, in consideration for providing its non-switched data roaming privileges, to move all of its voice roaming traffic from ACS Wireless to Digitel. The best rate that Digitel would agree to was double the voice rate currently charged by ACS Wireless for this service. Moreover, the Digitel network is not as robust as that of ACS Wireless in the Eagle River-Anchorage market. As MTA Wireless had no leverage to bring ACS Wireless to the table to negotiate, it was forced to accept Digitel's terms, and was grateful they were even made available.

MTA Wireless does not take issue with the Commission's refusal to impose price-cap or other forms of rate regulation on fees paid between carriers for roaming privileges.¹¹ However, in the absence of an obligation to provide access to broadband, non-interconnected data services on reasonable and non-discriminatory terms, MTA Wireless is finding that the marketplace does not provide it sufficient opportunity to negotiate reasonable terms. As the Commission is well aware, the CMRS market continues to consolidate, with smaller, regional operators continuing to be absorbed into the networks of larger, usually national carriers. The Alaska market has recently

¹¹ *Id.*, ¶¶ 37-38. Nor does MTA Wireless object to the Commission's restriction against requiring an automatic roaming obligation within a market where a requesting carrier operates its own facilities. *Id.*, ¶ 48.

witnessed AT&T Wireless' acquisition of Dobson, and GCI's acquisition of a controlling interest in Digitel. In the light of national trends, further consolidation of the Alaskan wireless market can be expected. Under these circumstances, the ability of small, independent competitors to secure fair and reasonable terms for broadband data roaming – if at all – will become increasingly daunting.

The Commission has recognized that the need for an automatic roaming obligation is particularly acute in rural areas – such as that served by MTA Wireless -- where smaller carriers and their subscribers have fewer opportunities to access the networks of larger systems for roaming purposes¹². MTA Wireless' own experience confirms that current market conditions are making it increasingly difficult to access larger (let alone, national) carriers' networks through automatic roaming agreements. Nevertheless, MTA Wireless does not seek Commission regulation of the pricing of such roaming services, but rather the right to negotiate among competing carriers for such roaming privileges in order to secure for itself and its subscribers the best possible terms. In addition, MTA Wireless submits that carriers providing automatic roaming should be required to divulge the terms on which such services are offered to other carriers.

In conclusion, MTA Wireless submits that mandatory broadband data roaming requirements are necessary to continue the historical benefits derived from voice roaming experiences of smaller, regional – and, particularly, rural – carriers. Without such benefits, the ability of smaller carriers to remain viable competitors is compromised, and the choices available to subscribers will be reduced, thereby dampening the incentive among surviving providers to innovate and enhance their systems. If the automatic roaming obligation established by the Commission in the *Roaming Order* is to have

¹² *Id.*, ¶¶ 28, 64.

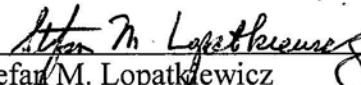
meaning in today's mobile telephony market, it must be made applicable equally to non-interconnected data features and services, such as Internet access, as this will be the sector of the market in which carriers will concentrate their competition in the next decade.

CONCLUSION

MTA Wireless endorses the Commission's adoption of a common carrier automatic roaming obligation for CMRS operators, but submits that, if this requirement is to have any meaningful effect for the benefit of consumers, it must be extended to include non-interconnected data services and features, particularly Internet access. In the absence of such a mandatory obligation, larger CMRS operators will not find it in their business interest to entertain requests for data roaming, and the current trend to consolidation of the wireless market will continue to accelerate, thereby depriving consumers of a robust range of choices in the market.

Respectfully submitted

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